



County of Los Angeles
CHIEF EXECUTIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

March 20, 2008

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To: Supervisor Yvonne B. Burke, Chair
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From: William T Fujioka
Chief Executive Officer

REPORT AND RECOMMENDATIONS – SB 1618 (HOLLINGSWORTH) DEFENSIBLE SPACE (ITEM NO. 26, AGENDA OF MARCH 25, 2008)

Item No. 26 on the March 25, 2008 Agenda relates to your Board's action of March 4, 2008 requesting a report and recommendations on SB 1618 (Hollingsworth) and related legislation on creation of a defensible space for structure protection during wildfires. The following report was prepared in consultation with the Fire Department, the Department of Public Works (DPW), and the Department of Regional Planning (DRP). In addition to an analysis of SB 1618, the Fire Department identified three other bills of interest which are AB 1912 (Plescia), AB 2859 (Gaines), and SB 1231 (Correa).

We are recommending the following positions on these bills:

SB 1618 (Hollingsworth) is intended to promote greater fire safety for residents in high fire hazard zones by making current environmental regulations less stringent so that the residents can more easily comply with required fuel modification programs, including brush clearance.

Position: **Oppose unless amended** to preserve existing local fuel modification plans and general plan elements designed to regulate how private development is situated in high fire hazard zones and/or environmentally significant areas.

AB 1912 (Plescia) would authorize a credit against income taxes for the purchase and installation of any wildfire risk reduction improvement.

Position: **Board policy determination** as there is no Board policy to support a credit against income tax for the purpose of purchase and installation of wildfire risk reduction improvements.

AB 2859 (Gaines) would exempt activities undertaken to comply with brush clearance requirements on behalf of a State agency, local government, or fire protection district, from professional forester licensure requirements.

Position: **Support.**

SB 1231 (Correa) would require the Office of the State Fire Marshal to develop a model defensible space program in consultation with representatives from local, State, and Federal fire services, local government, building officials, the building industry, and the environmental community.

Position: **Support if amended** to require development of the model defensible space program by a date certain or timeline prescribed by the Office of the State Fire Marshal and provide for a process that will consider the development of regional model defensible space programs.

Given the technical nature of these bills, affected County departments are prepared to discuss this legislation when your Board considers this report. An analysis of each of these bills is provided in the attachment.

We will continue to identify relevant legislation in this area and report to your Board as needed to provide updates and pursue County positions. If you have any questions or require additional information, your staff may contact Gerri Kariya at (213) 974-1100 or via e-mail at gkariya@ceo.lacounty.gov.

WTF:GK
MAL:DD:hg

c: Executive Officer, Board of Supervisors
County Counsel
Fire Department
Department of Public Works
Department of Regional Planning

Attachment

Analysis of Legislation – Defensible Space/Brush Clearance

SB 1618 (Hollingsworth), as introduced on February 22, 2008, is intended to promote greater fire safety for residents in high fire hazard zones by making current environmental regulations less stringent so that the residents can more easily comply with required fuel modification programs, including brush clearance.

Specifically, the bill would establish an exemption to the Endangered Species Act by allowing the incidental taking of an endangered or threatened species in the creation of a defensible space around a building or structure for fire safety reasons, under specified conditions. It also would amend the California Environmental Quality Act by prohibiting a lead agency from stating that specified activities related to the creation of defensible space for fire safety for a building or structure under specified conditions, can have a significant environmental impact. Finally, it would provide that specified activities, related to the creation of defensible space for fire safety for a building or structure, would be deemed consistent with the California Coastal Act of 1976.

Eligibility for the proposed exemptions is subject to the defensible space not exceeding 300 feet from a structure approved by the local fire official and vegetation management activities (that do not involve clearance) not to exceed 1,000 feet. In addition, one of the following circumstances must apply: 1) the local land use authority has entered into an agreement with the Department of Fish and Game for a Natural Communities Conservation Plan; 2) the local land use authority has obtained a Federal incidental take statement or an incidental take permit that authorizes the taking of an threatened or endangered species; or 3) more than 50 percent of the land in the county is owned by the Federal government.

Finally, the bill would create an uncompensated state-mandated local program and authorize local land use authorities to levy service fees, charges and/or assessments to pay for the program or service enacted by this bill.

The bill was referred to the Senate Committee on Natural Resources and Water on March 6, 2008. No hearing date has been set.

County Impact

The Fire Department indicates that current State law requires that at a minimum, a 100-foot defensible space be created around buildings and structures for fire safety. Los Angeles County requires larger defensible space of up to 200 feet in high fire hazard zones. The Department indicates that 300 feet of defensible space exceeds the necessary requirement because, according to information obtained from the State, the vast majority of structures lost during recent fires was due to embers, and not direct flame impingement. Clearance of 300 feet would not stop flying embers that can potentially travel much longer distances.

The Department also notes that experts now state that 100 feet of brush clearance is sufficient if the structure has been properly retrofitted and it is carefully sited on the parcel. Due to the fact that many structures are poorly sited and some property owners do not have the resources to retrofit their structure, the authority to require 200 feet of clearance is necessary and prudent.

The Department also indicates that its mission statement includes protection of the environment. Approval of SB 1618 would cause additional habitat destruction in the sensitive environmental areas that make Southern California unique. The Department believes that the County's existing processes and ordinances are sufficient in this regard and, as such, recommends an oppose unless amended position to preserve the County's existing fuel modification plan and general plan elements that provide for an effective local balance between structure protection and habitat destruction in environmentally sensitive areas.

DPW indicates that it would not be eligible for any of the legislation's proposed exemptions because its facilities are not covered by Natural Community Conservation Plans. DPW would have to obtain take permits from the United States Fish and Wildlife Service to exempt itself from the specified State laws. Further, the Federal Government does not own more than 50 percent of the land in Los Angeles County. As a property manager, DPW indicates that it is often difficult to comply with brush clearance orders in a timely manner due to the time and resources required to fulfill the regulatory requirements associated with the clearing activities. DPW has many facilities that pre-date or serve areas that pre-date many of the regulatory requirements and current development standards. However, the bill as written has no adverse impact on Public Works.

The Department of Regional Planning (DRP) is concerned about the implications should the County choose to take advantage of the exemptions by applying for an incidental take permit or adopting a Natural Community Conservation Plan (NCCP) under the Natural Community Conservation Planning Act. DRP indicates that, while reducing fire hazards is of vital importance to the County in protecting life and property, such reductions should not be made at the expense of endangered or threatened species facing extinction. DRP has established a policy within the Santa Monica Mountains Local Coastal Program, recently approved by your Board, but yet to be certified by the Coastal Commission, that biological resources should take precedence, but where public safety concerns are in conflict with protection of such biological resources, public safety concerns should be paramount.

DRP further indicates that experience with NCCPs in other jurisdictions demonstrates that this approach is not always an effective way to protect environmental resources while granting property owners and developers greater flexibility in modifying the immediate areas surrounding their properties. Instead, the County has developed extensive policies for Significant Ecological Areas and Sensitive Environmental Resource Areas within its jurisdiction. These policies regulate how private development should be situated within these areas, and generally require extensive environmental review. Furthermore, the General Plan contains policies discouraging development in areas with high fire risks. The Department believes that these existing protections must remain in place.

For new developments, placing the responsibility solely on the applicant, which is currently the case, to file for a take permit or to prepare a NCCP would force the applicant to better design the project to minimize environmental damage and avoid the expenses required to file a permit or prepare a plan. The Environmental Impact Report exemption might help DRP to streamline its operations in Impact Analysis, but SB 1618 will not preclude the Department from imposing additional conditions and mitigation measures where possible to minimize environmental impacts that would be caused by the project. However, the potential environmental impacts would be undetermined and potentially destructive because the County would be precluded from making a finding of significant environment impact and develop appropriate mitigation efforts to minimize the impacts to the extent possible.

Furthermore, DRP notes that it is well known that removing any endangered or threatened plant species, which tend to be indigenous and well-adapted to fire, would provide an opportunity for non-native invasive species to occupy and take root, thus posing an even greater fire risk.

DRP indicates that as currently written, SB 1618 will not affect their operations, since it does not *require* the County to obtain an incidental take permit or prepare a Natural Communities Conservation Plan to cover all existing and future property owners when they engage in their required fuel modification activities on their properties to minimize fire risks. The Department strongly suggests that the applicant, not the County, should fully shoulder the responsibility to obtain the required paperwork to complete fuel modification activities, and allow the County full opportunity to offer input in how the activities should be monitored while protecting very sensitive biological resources.

The draft County General Plan, which is currently in public review and the Santa Monica Mountains Local Coastal Program, as approved by your Board, already delineate policies to protect sensitive environments wherever possible. Nevertheless, giving property owners blanket opportunities to destroy endangered and threatened biological resources without increased scrutiny, would defeat the aims of these policy documents. Therefore, the Department recommends the County oppose SB 1618 unless amended to preserve local general plan elements and other local plans that have been established to balance the needs of managing defensible space and protecting environmentally significant areas.

Based on these comments, we concur with the Fire Department and DRP and recommend an oppose position on SB 1618 unless amended to preserve existing local fuel modification plans and general plan elements designed to regulate how private development is situated in high fire hazard zones and/or environmentally significant areas.

AB 1912 (Plescia), as introduced on February 8, 2008, would authorize a credit against income taxes for each taxable year beginning on or after January 1, 2009, and before January 1, 2013, in an amount equal to 15 percent of the cost incurred by a taxpayer during the taxable year, after deducting the value of any other municipal, state, or federally

sponsored financial incentives, for the purchase and installation of any wildfire risk reduction improvement, as defined, installed on existing property in the State. Although the Fire Department is supportive of this concept, there is no Board policy to support a credit against income tax for this purpose. Therefore, **support for AB 1912 is a matter for Board policy determination.** The bill was referred to the Assembly Committee on Revenue and Taxation on February 21, 2008.

AB 2859 (Gaines), as introduced on February 22, 2008, would exempt activities undertaken to comply with brush clearance requirements on behalf of a State agency, local government, or fire protection district, from professional forester licensure requirements. **The Fire Department recommends support of AB 2859, and we concur.** Due to the nature of the content of this bill, DPW and DRP have taken no position. The bill was referred to the Assembly Committee on Natural resources on March 13, 2008. No hearing date has been set.

SB 1231 (Correa), as introduced on February 14, 2008, would require the Office of the State Fire Marshal to develop a model defensible space program in consultation with representatives from local, state, and Federal fire services, local government, building officials, the building industry, and the environmental community. The model would be made available for use by a city, county, or city and county in the enforcement of defensible space provisions.

The bill would set forth required components of the program including 1) general guidelines for creating and maintaining defensible space around specified structures, including appropriate guidelines and definitions for vegetation management; 2) suggested minimum qualifications needed for enforcement personnel; 3) guidelines for the placement of utilities; and, 4) enforcement mechanisms for compliance with, and maintenance of defensible space requirements, including, but not limited to, the following: site inspection, procedures for notifying a property owner of any violation, a timeline for re-inspection, citations for abatement of violation and subsequent removal of fire hazards within defensible space boundaries, and a suggested administrative procedure that allows for appeal of the citation by the property owner.

The bill also would authorize the local agency for enforcement of the program to recover the actual cost of abatement and to place it as a special assessment or lien on the property. Such a process would provide an opportunity for the County to advocate areas of concern noted in SB 1618 and avoid the application of one standard to the State's varying geographical susceptibility to fires and thoroughly address other critical issues including the California Endangered Species Act, the California Environmental Quality Act, and the California Coastal Act of 1976.

The bill, however, does not establish a definite date for the development of the model program. In addition, the proposed process should acknowledge that there are regions throughout the State that have unique fuel management characteristics and needs, and as such, a single model or approach is not feasible. Based on this analysis, **the Fire Department and this office, with the concurrence of DPW and DRP, recommend**

support for SB 1231 if amended to require development of the model defensible space program by a date certain or timeline prescribed by the Office of the State Fire Marshal and provide for a process that will consider the development of regional model defensible space programs. The bill was referred to the Senate Committee on Natural Resources and Water with a hearing set for March 25, 2008.